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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 14 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Promotion of Competitive Networks in)	
Local Telecommunications Markets)	WT Docket No. 99-217
)	
Wireless Communications Association)	
International, Inc. Petition for)	
Rulemaking to Amend Section 1.4000)	
of the Commission's Rules to Preempt)	
Restrictions on Subscriber Premises)	
Reception or Transmission Antennas)	
Designed To Provide Fixed Wireless)	
Services)	
)	
Implementation of the Local Competition)	CC Docket No. <u>96-98</u>
Provisions in the Telecommunications Act)	
of 1996)	
)	
Review of Sections 68.104, and 68.213)	CC Docket No. 88-57
of the Commission's Rules Concerning)	
Connection of Simple Inside Wiring)	
to the Telephone Network)	

OPPOSITION TO BELL SOUTH'S PETITION FOR RECONSIDERATION

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Dated: March 14, 2001

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OPPOSITION TO BELL SOUTH'S PETITION FOR RECONSIDERATION

Cypress Communications, Inc. ("Cypress"), pursuant to Section 1.429(f) of the Commission's rules, hereby opposes BellSouth Corporation's¹ (BellSouth's) request that the Commission reconsider a portion of the revised demarcation point definition adopted in the First Report and Order in the above referenced proceeding.²

¹ BellSouth Petition for Reconsideration (filed February 12, 2001 in WT Docket No. 99-217, CC Docket No 96-98 and CC Docket No. 88-57).

² *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket (footnote continued on next page)

I. THE COMMISSION SHOULD NOT RECONSIDER ITS RULE THAT REQUIRES A TELEPHONE COMPANY TO RELOCATE THE DEMARCATION POINT TO THE MINIMUM POINT OF ENTRY AT THE REQUEST OF A MULTI-TENANT ENVIRONMENT PREMISES OWNER.

Reconsideration is appropriate only “where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.” *In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff; Provision of 800 Service*, Order on Reconsideration, 12 FCC Rcd 5188, 5202 n. 84 (1997) (quoting *In re Applications of D.W.S., Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 2933 (1996)). BellSouth raises three arguments in support of its petition for reconsideration. None meet the Commission’s standard for reconsideration.

1. First, BellSouth argues that “[t]he Commission appears not to have considered whether it had the authority to allow non-regulated third-party non-subscribers to initiate service affecting network reconfiguration at the expense of providers of wireline telecommunications” BellSouth at 2. BellSouth’s argument is confusing at best. To the extent that BellSouth is suggesting that the Commission does not have the authority to allow building owners to require the ILEC to move the demarcation point to the MPOE, thus initiating a network reconfiguration, BellSouth misunderstands the Commission’s *Order*. The Commission is exercising authority over LECs, not building owners.

No. 88-57 (rel. October 25, 2000), 66 Fed. Reg. 2,322 (2001) (to be codified at 47 C.F.R. pt. 1, 64 and 68) (“*First Report and Order*” or “*Order*”).

Specifically, the Commission is requiring LECs to move the demarcation point to the minimum point of entry (“MPOE”) at the request of building owners. The Commission explained that “*the incumbent carrier* must move the demarcation point to the MPOE upon the premises owner’s request.”³

Moreover, there would not be an “authority problem” even if the Commission were not exercising authority over LECs. This is because the Commission does not need authority to allow building owners to control inside wiring since inside wiring services are deregulated. In other words, building owners are free to own or control inside wiring and do not require permission from the Commission to do so.

Finally, BellSouth’s suggestion that building owners who gain control of inside wiring do so at LECs’ “expense” is simply wrong. LECs are entitled to compensation for the cost of relocating the demarcation point to the MPOE.⁴

2. BellSouth’s second argument is that the Commission “appears not . . . to have considered the effects of such activities [*i.e.*, moving the demarcation point to the MPOE] on end user customers.” BellSouth at 2. BellSouth is incorrect. The Commission explained that the demarcation point rules adopted in its *Order* will “substantially reduce the potential for incumbent LECs to obstruct competitive access to MTEs.”⁵ Increasing competitive access to MTEs will benefit consumers by providing consumer choice, lowering prices and improving service quality.

³ *First Report and Order* ¶ 54 (emphasis added).

⁴ *First report and Order* ¶ 54.

⁵ *Id.* ¶ 58.

(footnote continued on next page)

Moreover, the Commission should disregard BellSouth's specific allegation that the Commission's requirement that LECs conclude negotiations with building owners to move the demarcation point to the MPOE within 45 days of the building owner's request could result in service impairment for end users; BellSouth does not corroborate its contention with evidence or explanation.⁶ The Commission routinely rejects petitions for reconsideration based on conclusory arguments and should do so in this case.⁷ Furthermore, as BellSouth surely must know, no rational building owner would take action in relocating the demarcation point to the MPOE that would jeopardize its tenants' telecommunications services. BellSouth does not explain why building owners would act in a manner inconsistent with their tenants' interests.

3. BellSouth's third argument is that it "is subject to tariffed service guarantees which under certain circumstances it may not be able to maintain in the event of a relocation of the network facility demarcation to the MPOE." BellSouth at 4. The Commission should

⁶ It is not surprising that BellSouth does not support its allegation with evidence or an explanation of any kind; it requires a great deal of creativity to offer a plausible explanation for how a negotiating process can result in service impairment.

⁷ *In the Matter of Notice of Proposed Rulemaking to Amend Part 31 Uniform System of Accounts for Class A or Class B Telephone Carriers to Account for Judgements and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M*, Memorandum Opinion and Order, 4 FCC Rcd 4092, ¶ 35 (1989) ("In the petitions for reconsideration and the ensuing comments, the carriers merely make conclusory statements that the new rules are inconsistent with GAAP; they do not specify how they are inconsistent."); *In re Application of Panola Broadcasting Co. For Renewal of License of Station WBLE, Batesville, Mississippi*, Memorandum Opinion and Order, 68 FCC 2d 533, ¶ 92 (1978) ("Even if we were to consider petitioners' motion on the merits, we would deny it since the motion offers no specific support to indicate the need for reconsideration. Rather, petitioners' motion consists merely of conclusory statements . . .").

not accord this argument any weight since Section 1.429 of the Commission's rules states that the Commission will grant a petition for reconsideration which relies on new facts only if:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or (3) The Commission determines that consideration of the facts relied on is in the public interest.⁸

None of these conditions is satisfied in this case. BellSouth does not satisfy conditions one and two because BellSouth's tariffs are not new and because BellSouth had knowledge of its tariffs prior to its last opportunity to present them. Condition three is not satisfied because a potential conflict between the tariffs and the Commission's requirement that LECs move the demarcation point to the MPOE at building owners' request can be remedied by BellSouth by simply amending the tariff. Accordingly, consideration of BellSouth's tariffed service guarantees is not in the public's interest.

In addition, the Commission should not even consider BellSouth's tariff argument because BellSouth has not satisfied its burden of demonstrating that the Commission's decision should be modified.⁹ For one, BellSouth is not certain that the Commission's demarcation point rule will prevent it from fulfilling its service guarantees. BellSouth states

⁸ 47 C.F.R. § 1.429(b).

⁹ *In the Matter of MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Memorandum opinion and Order on Reconsideration, 1 FCC Rcd 615, n.6 (1986) ("persons who petition for reconsideration always have the burden of demonstrating that a final decision should be modified.")

that “*under certain circumstances* it *may* not be able to maintain” its tariffed service guarantees. BellSouth at 4 (emphasis added). The Commission should not modify an important rule when even the entity requesting that the rule be modified is not certain that there is a problem with that rule.

For another, BellSouth merely makes conclusory statements that its tariffed service guarantees are inconsistent with the Commission’s requirement that it move the demarcation point to the MPOE at building owners’ requests; BellSouth does not specify how its tariffed service guarantees are inconsistent. For example, BellSouth does not even cite to its tariffed service guarantees. BellSouth cannot satisfy its burden of demonstrating that the Commission’s decision should be modified without providing this information.¹⁰

¹⁰ In any event, in Cypress’s experience, BellSouth frequently violates its tariffed service guarantees. BellSouth is simply raising this argument to preserve its stranglehold over in-building wiring.

II. CONCLUSION.

For the reasons stated herein, the Commission should deny BellSouth's Petition for Reconsideration.

Respectfully submitted,
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Dated: March 14, 2001

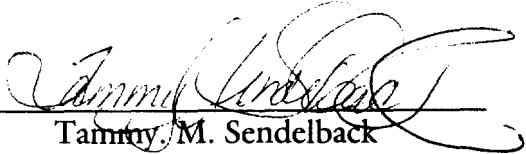
CERTIFICATE OF SERVICE

I, Tammy M. Sendelback, certify that on March 14, 2001, I caused copies of the foregoing Opposition to BellSouth's Petition For Reconsideration to be sent by hand delivery or U.S. mail, first class, postage pre-paid (as indicated below) to the following:

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